

Applicants: Peter David East and Susan Elizabeth Brown
Serial No.: 10/590,539
Filed: August 24, 2006
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REMARKS

Claims 1, 5, 6, 8-18, 20, 21, 23, 25, and 27-29 are pending in the subject application. Claims 1, 5, 11, 12, 14, 16-18, 20, 21, 23, 25, 27, and 28 are withdrawn from consideration by the Examiner as being drawn to nonelected inventions.

Applicants have hereinabove amended claims 1, 6, 11, 15, 17, 21, 23, 25, 28, and 29.

Support for the amendments to claims 1, 11, 15, and 17 may be found, *inter alia*, in the specification as filed at page 2, lines 15-21. Support for the amendments to claim 6 may be found, *inter alia*, in the specification as filed at page 5, lines 19-27. Support for the amendments to claim 21 may be found, *inter alia*, in the specification as filed at page 8, line 24. Support for the amendments to claim 23 may be found, *inter alia*, in the specification as filed at page 9, line 28. Support for the amendments to claim 25 may be found, *inter alia*, in the specification as filed at page 10, line 9. Support for the amendments to claim 28 may be found, *inter alia*, in the specification as filed at page 2, lines 28-33. Support for the amendments to claim 29 may be found, *inter alia*, in the specification as filed at page 5, lines 17-37, and at page 6, lines 1-9.

Election/Restriction

The Examiner has found applicants' arguments filed in the Substitute Amendment in Response to October 10, 2008 Office Action non-persuasive. Applicants do not concede the correctness of the Examiner's position, but refrain from further comment regarding the restriction requirement at this time.

Information Disclosure Statement

Applicants note that the Examiner has considered and made of record the reference submitted with the Information Disclosure Statement filed on

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March 10, 2009 as indicated by the initialed copy of PTO Form 1449 included with the July 6, 2009 Office Action.

Objections Withdrawn

Applicants note that the objection to the specification and the objection to claim 6 have been withdrawn in light of applicants' amendments filed in response to the October 10, 2008 Office Action.

New Objections

The Examiner objected to claim 29 as being dependent upon a rejected base claim, but stated claim 29 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Examiner also asserted that claim 29 includes non-elected subject matter.

In response, applicants have amended claim 29 so that it is in independent form and incorporates all the limitations of claim 6.

It is not clear to applicants what non-elected subject matter the Examiner is referring to in the objection to claim 29. Applicants maintain that amended claim 29 is drawn to elected subject matter.

Accordingly, applicants respectfully request reconsideration and withdrawal of the objections to claim 29.

Claim Rejections Withdrawn

Applicants note the withdrawal of (1) the 35 U.S.C. § 112, first paragraph, written description rejection of claim 15; (2) the 35 U.S.C. § 112, first paragraph, enablement rejection of claims 6, 8-10, 13, and 15; and (3) the 35 U.S.C. § 112, second paragraph, rejection of claims 6, 8-10, 13, and 15.

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Claim Rejections Maintained - 35 U.S.C. § 102

The Examiner maintained the rejection of claims 6, 8-10, 13, and 15 under 35 U.S.C. § 102(b) as anticipated by Altier et al. (WO 02/086072 A2). The Examiner asserted that claim 6 recites "a sequence of nucleotides provided in SEQ ID NO:9" and that any sequence of nucleotides within SEQ ID NO:9 meets this limitation. Likewise, the Examiner asserted that claim 15 recites "an amino acid sequence as provided in SEQ ID NO:4" and that an amino acid sequence includes any sequence found (or provided) in SEQ ID NO:4.

The Examiner further asserted that Altier et al. teaches a DNA construct (SEQ ID NO:1 of Altier et al.) with a sequence that has nucleotides 151-153 in common with nucleotides 37-39 of SEQ ID NO:9 of the present invention, and that the the DNA construct of Altier et al. encodes a peptide (SEQ ID NO:2 of Altier et al.) which has amino acids 50-52 in common with amino acids 13-15 of SEQ ID NO:4 of the present invention. It is the Examiner's position that SEQ ID NO:1 and SEQ ID NO:2 of Altier et al. anticipate the claims of applicants' invention.

In response, applicants have amended claims 6 and 15 to make clear that the sequence claimed is the sequence identified by a specific SEQ ID NO, not a sequence within such a SEQ ID NO, whenever appropriate. Altier et al. does not teach the polynucleotide of SEQ ID NO:9 or the amino acid sequence of SEQ ID NO:4. Therefore, amended claims 6 and 15, as well as dependent claims 8-10 and 13 are not anticipated by Altier et al. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the 35 U.S.C. §102(b) rejection of claims 6, 8-10, 13, and 15, as amended.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

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No fee, other than the enclosed \$350.00 including a \$130.00 fee for a one-month extension of time, and a \$220.00 fee for an additional independent claim, is deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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 11/15/09
John P. White Date
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